

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ANTHONY FRANKLIN,

Petitioner,

v.

PATRICK A. NOGAN, et al,

Respondents.

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Civil Action No. 15-891 (ES)

ORDER

This matter has come before the Court on a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (D.E. No. 1). It appearing that:

1. On March 3, 2015, this Court entered an Order directing Respondent to file an Answer to the Petition within 45 days. (D.E. No. 2).

2. On March 30, 2015, pursuant to a request from Respondent, the Court entered an Order extending the time to file an Answer until May 15, 2015. (D.E. No. 5).

3. On May 1, 2015, Petitioner filed a Motion for Default Judgment based on his mistaken belief that the deadline for filing an Answer had expired. (D.E. No. 10).

4. Since the deadline for filing an Answer had not yet expired at the time Petitioner filed his Motion, the Motion will be denied.¹

¹ Moreover, the Court notes that it is doubtful that a default judgment is even available in a habeas corpus proceeding. *See Lemons v. O'Sullivan*, 54 F.3d 357, 364 (7th Cir. 1995) (explaining that a default judgment is a "disproportionate sanction" that "is disfavored in habeas corpus cases"); *Gordon v. Duran*, 895 F.2d 610, 612 (9th Cir. 1990) ("The failure to respond to claims raised in a petition for habeas corpus does not entitle the petitioner to a default judgment."); *Aziz v. Leferve*, 830 F.2d 184, 187 (11th Cir. 1987) ("[A] default judgment is not contemplated in habeas corpus

IT IS THEREFORE, on this 13th day of may 2015,

ORDERED that Petitioner's Motion for Default Judgment, (D.E. No. 10), is DENIED.



Esther Salas, U.S.D.J.

cases"); *Allen v. Perini*, 424 F.2d 134, 138 (6th Cir. 1970) ("Rule 55(a) has no application in habeas corpus cases"). Even if a default judgment is available in habeas corpus proceedings, Petitioner is not entitled to such a sanction, as explained above.